

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RAY A. GONZALES,

Plaintiff,

v.

Case No. 2:04-cv-108
HON. ROBERT HOLMES BELL

WAYNE DESHAMBO, et al.,

Defendants.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action. The Report and Recommendation was duly served on the parties. The Court has received objections from the plaintiff. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Plaintiff argues that there exists a question of fact whether his physician informed defendant DeShambo to allow plaintiff to participate in the Ramadan Fast. Plaintiff was on a prescribed diet due to diabetes. Defendants stated that they would not allow plaintiff to participate in the Ramadan Fast unless they received a written order from a physician which changed plaintiff's diet. Plaintiff concedes that requiring an order from a physician is reasonable under the circumstances. Plaintiff maintains that his physician provided such an order verbally, and further contends that a written order is not required by policy. The question in this case, however, is

whether defendants violated plaintiff's constitutional rights. Defendant DeShambo agrees that he did speak with plaintiff's physician who informed defendant that plaintiff "should not be denied." Defendant DeShambo asserts that plaintiff's physician never ordered or approved the Ramadan diet. Further, without a written order changing plaintiff's prescribed diet, defendants assert that they were powerless to make the change. Under these circumstances, defendants acted reasonable in requiring a written physician order to change plaintiff's prescribed diet. Plaintiff has now presented to the court a Health Care Request Form dated November 12, 2001, which stated "Dr. Abdallatif said it is OK to fast." However, this request was written approximately two years before the 2003 Ramadan Fast at issue in this case. Plaintiff has failed to provide evidence of a physician's order which allowed him to participate in the 2003 Ramadan Fast.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court.

The court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the court grants defendants' motion for summary judgment, the court discerns no good-faith basis for an appeal. Should the plaintiff appeal this decision, the court will assess the \$255 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless plaintiff is barred from proceeding *in forma pauperis*, e.g., by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the \$255 appellate filing fee in one lump sum.

Date: August 30, 2005

/s/ Robert Holmes Bell
 ROBERT HOLMES BELL
 CHIEF UNITED STATES DISTRICT JUDGE